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DECISION



21252
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-206090

DATE: March 22, 1982

MATTER OF: United Terex, Inc.

DIGEST:

GAO will not review a contracting officer's determination of nonresponsibility where the Small Business Administration (SBA), which initially determined that the protester was ineligible for the certificate of competency (COC) procedure, subsequently stated it would reexamine the protester's eligibility and asked that the contracting officer resubmit the responsibility matter to SBA. Since SBA, not GAO, is statutorily authorized to review nonresponsibility determinations, the contracting agency should resubmit the matter to SBA, as requested.

United Terex, Inc., protests the Department of the Army determination that it is a nonresponsible bidder and, therefore, ineligible for award under invitation for bids No. DAAJ09-81-B-1020 issued by the Army Troop Support & Aviation Materiel Readiness Command, St. Louis, Missouri, for aerial cargo slings.

The protester, a small business concern, contends that the Army must reconsider its determination on the basis of new information submitted to the contracting officer and resubmit the matter to the Small Business Administration (SBA) for possible issuance of a certificate of competency (COC).

We conclude that the protest concerns a matter for final resolution by SBA and will not consider the merits of the protester's contentions.

The Army contracting officer determined that United Terex was nonresponsible for lack of integrity, pursuant to Defense Acquisition Regulation § 1-903.1(iv) (1976 ed.), and referred the matter to SBA for possible issuance of a COC. By letter of January 14, 1982, SBA

advised the contracting officer that while United Terex was able to obtain the necessary capacity and credit to insure satisfactory performance of the proposed award, the firm was not eligible for a COC because it would not perform a significant portion of the work with personnel on its own payroll. However, on January 20, 1982, SBA informed the contracting officer that it appeared, on the basis of further information submitted by the bidder, that United Terex could overcome SBA's initial objections. SBA stated that the basic question of eligibility was not part of the contracting officer's referral, asked that any proposed award be deferred, and requested that the matter of the bidder's responsibility be resubmitted to SBA.

The Army states that it has considered the "new information" submitted by the protester, that it is neither new nor relevant to the matter of integrity upon which the firm was determined to be nonresponsible, that it does not alter the contracting officer's determination, and that the agency's review satisfies the requirement for considering new information set forth in Inflated Products Company, Incorporated, B-188319, May 25, 1977, 77-1 CPD 365. The contracting agency argues that SBA's denial of the COC must be viewed as affirming the Army contracting officer's nonresponsibility determination and concludes that our Office lacks authority to consider the protest, citing Inflated Products Company, Incorporated, supra. Finally the contracting officer takes the position, based on our decision in Reuben Garment International Co., Inc., B-198923, September 11, 1980, 80-2 CPD 191, that having considered the protester's new information, he is under no obligation to resubmit the matter to SBA.

We find that Inflated Products and Reuben Garment are not controlling here. Unlike those cases in which SBA declined to issue a COC based on consideration of factors related to responsibility, here SBA initially decided that United Terex was not eligible for a COC. In our opinion, SBA's denial of a COC based on the bidder's eligibility under the COC procedure rather than the bidder's responsibility does not affirm the contracting officer's nonresponsibility determination. SBA's indication of its willingness to reconsider United Terex's eligibility and request that the contracting officer resubmit the matter of the bidder's responsibility further indicate

that SBA's decision did not constitute a final determination. Because SBA, not the contracting officer, has the statutory authority, under 15 U.S.C. § 637(b)(7)(A) (Supp. III, 1979), to make final dispositions with respect to all elements of responsibility, including integrity, of small business concerns, we conclude that the matter should be resubmitted to SBA.

Under these circumstances, our Office will not review the contracting officer's determination because our review would amount to substituting our Office for the SBA, the agency specifically authorized by law to review such determinations. Consequently, we dismiss the protest.

Harry R. Van Cleve
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Acting General Counsel